

BEFORE THE IOWA BOARD OF PHARMACY

RE:
Pharmacy License and
Controlled Substances Registration of

WALGREENS 4405

License No. 719
Registration No. 1106705
Respondent

CASE NO. 2017-32

**NOTICE OF HEARING, STATEMENT OF
CHARGES, AND ORDER TO SHOW CAUSE**

COMES NOW the Iowa Board of Pharmacy ("Board") and files this Notice of Hearing, Statement of Charges, and Order to Show Cause against Walgreens 4405 ("Respondent"), 2508 W Broadway, Council Bluffs Iowa 51501, pursuant to Iowa Code sections 17A.12(2), 17A.18(3), 124.305, 272C.3(1)"e", and 657 IAC 10.12, 35.6, and 35.7. Respondent's Iowa pharmacy license number 719 is currently active through December 31, 2017, and Respondent's controlled substances registration number 1106705 is currently active through May 31, 2019.

A. TIME, PLACE, AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on January 16, 2018, before the Board. The hearing shall begin at 9:00 a.m. and shall be located in the Board conference room located at the Iowa Board of Pharmacy Office, 400 SW 8th St, Ste E, Des Moines IA 50309.

Answer. Within twenty (20) days of the date you are served this Notice of Hearing and Statement of Charges, you may file an Answer pursuant to 657 IAC 35.16. The Answer should specifically admit, deny, or otherwise answer all allegations contained in sections C, D, and E of this Notice of Hearing, Statement of Charges, and Order to Show Cause.

Filing of Pleadings. Pleadings shall be filed with the Board either by e-mail, if done in compliance with 657 IAC 35.17(2), to Amanda.Woltz@iowa.gov, or by mail/delivery to the following address: Iowa Board of Pharmacy, 400 SW 8th St, Ste E, Des Moines IA 50309.

Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge from the Department of Inspections and Appeals make initial rulings on prehearing matters, and be present to assist and advise the Board at hearing.

Hearing Procedures. The procedural rules governing the conduct of the contested case hearing, including prehearing matters, are found at 657 IAC chapter 35. At the hearing, you may appear personally or be represented by counsel at your own expense. You will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf on issues of material fact, cross-examine witnesses present at the hearing, and examine and respond to any documents introduced at the hearing. The hearing may be open to the public or

closed to the public at your discretion, pursuant to Iowa Code section 272C.6(1) and 657 IAC 35.25(10).

Prosecution. The Office of Attorney General of Iowa is responsible for representing the public interest (the State) in this proceeding. Counsel for the State in this matter is Assistant Attorney General Laura Steffensmeier. Ms. Steffensmeier can be reached by phone at (515) 281-6690. Copies of pleadings should be provided to counsel for the State either by email to Laura.Steffensmeier@iowa.gov, or by mail/delivery to the following address:

Laura Steffensmeier
Assistant Attorney General
Hoover State Office Building—2nd Floor
1305 E Walnut St
Des Moines IA 50319

Communications. You may not contact individual Board members in any manner, including by phone, letter, or e-mail, regarding this Notice of Hearing, Statement of Charges, and Order to Show Cause. Board members may only receive information about the case when all parties have notice and the opportunity to participate, such as at the hearing or in pleadings you file and serve upon all parties in the case.

B. LEGAL AUTHORITY AND JURISDICTION

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A, 124, 155A, and 272C (2017).

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 124, 155A, and 272C, and 657 IAC chapters 10 and 36.

Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 657 IAC 35.27.

C. STATEMENT OF CHARGES

COUNT I

FAILURE TO MEET SECURITY REQUIREMENTS

Respondent is charged with failing to provide effective controls and procedures to guard against theft and diversion of controlled substances in violation of 657 IAC 10.13, and may be disciplined pursuant to Iowa Code sections 124.304(1)(d), 155A.15(2)(c), and 155A.15(2)(i), and 657 IAC 10.12(1)"d" and 36.6(21).

COUNT II

FAILURE TO TIMELY REPORT THEFT/LOSS TO THE DEA AND BOARD

Respondent is charged with failing to submit a Form 106 directly to the DEA, with a copy to the Board, reporting theft or loss within 14 calendar days of the discovery of theft or loss in violation of 657 IAC 10.21(3), and may be disciplined pursuant to Iowa Code sections 124.304(1)(d) and 155A.15(2)(c), and 657 IAC 10.12(1)"d" and 36.6(21).

COUNT III

FAILURE TO TIMELY REPORT THEFT COMMITTED BY A REGISTRANT

Respondent is charged with failing to notify the Board immediately upon discovery of theft committed by a registrant or licensee of the board in violation of 657 IAC 10.21(1), and may be disciplined pursuant to Iowa Code sections 124.304(1)(d) and 155A.15(2)(c), and 657 IAC 10.12(1)"d" and 36.6(21).

D. FACTUAL CIRCUMSTANCES

1. From March 2016 to February 2017, Respondent experienced losses of over 7,000 tablets of controlled substances, which were attributed to employee pilferage.
2. On May 9, 2016, the Board received a DEA Form 106 from Respondent reporting losses that occurred on or around March 5, 2016. The report attributed the losses to employee pilferage but did not identify the employee/s responsible.
3. On February 17, 2017, the Board received a DEA Form 106 from Respondent reporting losses that occurred on or around December 21, 2016. The report attributed the losses to employee pilferage but did not identify the employee/s responsible.
4. On March 27, 2017, the Board received a DEA Form 106 from Respondent reporting losses that occurred on or around February 15, 2017. The report attributed the losses to employee pilferage but did not identify the employee/s responsible.
5. Respondent has prior discipline from the Board for employing technicians without proper registrations.

E. ORDER TO SHOW CAUSE

1. Pursuant to Iowa Code section 124.304(1)(d) and 657 IAC 10.10(1)"d", the Board may suspend, revoke, or restrict a controlled substances registration upon a finding that the registrant has committed such acts as would render the registrant's registration under Iowa Code section 124.303 inconsistent with the public interest as determined under that section.
2. A registrant's compliance with applicable state and local laws is a factor to be considered when determining whether a registration is inconsistent with the public interest, pursuant to Iowa Code section 124.303(1)(b) and 657 IAC 10.10(4)"b".

3. The Statement of Charges and Factual Circumstances described in sections C and D above render Respondent's registration inconsistent with the public interest and serve as the basis for this Order to Show Cause.

4. Respondent is ordered to show cause why its controlled substances registration should not be suspended, revoked, or restricted at the hearing described in section A above.

F. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 657 IAC 35.24. To cancel a scheduled hearing, an executed settlement agreement must be received by the Board at least three (3) business days prior to the scheduled hearing. If you are interested in pursuing settlement in this matter, please contact the Assistant Attorney General identified above.

G. FINDING OF PROBABLE CAUSE

On this 1st day of November, 2017, the Iowa Board of Pharmacy found probable cause to file this Notice of Hearing, Statement of Charges, and Order to Show Cause.



Chairperson
Iowa Board of Pharmacy

Copy to:

Laura Steffensmeier
Assistant Attorney General
Hoover State Office Building—2nd Floor
1305 E Walnut St
Des Moines IA 50319
ATTORNEY FOR THE STATE

PLEASE NOTE: If you require the assistance of auxiliary aids or services to participate in this matter because of a disability, immediately call 515-281-5944. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).